

Atlantic Yards Community Development Corporation
Meeting of the Directors

Held at the New York City Offices of
Empire State Development
633 Third Avenue – 37th Floor Conference Room
New York, New York 10017

April 11, 2023

MINUTES

In Attendance

Directors: Daniel Kummer, Acting Chair
Anand Amin
Shawn Austin
Drew Gabriel
Tamara McCaw
Ronald Shiffman
Ethel Tyus
Deborah Young
Gib Veconi

AYCDC Staff: Tobi Jaiyesimi - AYCDC Director
Raymond Orlando - Chief Financial Officer
Debbie Royce - Corporate Secretary
Goldie Weixel - Acting General Counsel

ESD Staff: Julia Borukhov - Financial Project Manager
Yvonne Cooper - Paralegal
Tiffany Bowie - Director, Subsidiary Finance
Marcio David - Manager of Accounting
Richard Dorado - Senior Counsel
Edward Espejo - Assistant Treasurer, Treasury Operations
Courtney Heed - Paralegal
Robert Jones - VP, Contract Administration
Eugene Kwiatkowski - Senior Director of Budgeting
Arden Sokolow – Executive Vice President, Real Estate
Development and Planning

Also Present: Members of the Public
Members of the Press

The meeting of the Directors of AYCDC was called to order at approximately 9:38 a.m.

by Acting Chair Kummer. The Directors were reminded that the meeting was being webcast and that they had received the written materials in advance of the meeting and were free to ask questions at any time. He then welcomed two new members of the Board to the meeting, Anand Amin, appointed by New York City Mayor Adams; and Ronald Shiffman, appointed by Brooklyn Borough President Antonio Reynoso.

Acting Chair Kummer then noted that after each Agenda item is presented and comments from the Directors are received, the Public will be allowed to provide comments. He also stated that the last item on the Agenda is “Public comments”, during which the Public can speak on non-Agenda related matters.

Acting Chair Kummer then asked the Directors whether anyone had any potential conflicts of interest with respect to any of the items on the Agenda. Hearing none, he then asked Tobi Jaiyesimi to provide the Corporate update portion of the Agenda. He advised that this item would be provided for informational purposes and no vote or action would be required from the Directors.

Director Veconi called for a point of order and asked why the Minutes of the June 7th meeting were not provided. Ms. Jaiyesimi responded that the transcript was being finalized with the stenographer and Minutes would be prepared and provided at a future meeting once that is received. She noted that the webcast of the meeting is available on ESD’s website so the record of it is publicly available. Acting Chair Kummer requested that they be provided at

the next meeting, along with the Minutes of this meeting.

Ms. Jaiyesimi then presented the Fiscal Year 2023-24 AYCDC operating budget. She explained the budget allotted \$221,567 in personal expenses to cover salary and fringe benefits for the AYCDC project team, and \$28,433 in non-personal services, primarily insurance purposes and also office occupancy cost.

Acting Chair Kummer asked for confirmation that the funds are provided via the cost agreement between the project's developer and Empire State Development and Ms. Jaiyesimi responded that it was and in response to further request, confirmed that there is adequate insurance coverage despite a reduction in that expense.

Acting Chair Kummer asked how long that cost allowance is in effect and Ms. Jaiyesimi responded she thought through 2025 or 2026, if recalling correctly.

In response to a question from Director Shiffman on the function of the office between meetings, Ms. Jaiyesimi provided information on the day-to-day responsibilities of the AYCDC team.

Following the questions from the Directors and noting there were no questions from members of the public, upon motion duly made and seconded, the following resolution was unanimously adopted:

ATLANTIC YARDS COMMUNITY DEVELOPMENT CORPORATION – AYCDC FY 2023-24 Operating Budget – Approval of the Corporation’s Operating Budget for FY 2023-24 (April 1, 2023 – March 31, 2024)

BE IT RESOLVED, based on the materials presented at this meeting and ordered filed with the Corporation (the “Materials”), the Corporation’s proposed FY 2023-24 Operating Budget is hereby approved, and adopted in all respects, substantially in the form set forth in the materials and subject to the availability of funds; and be it further

RESOLVED, that the Officers of the Corporation and/or appropriate designees, and each of them hereby are, authorized and directed to take all actions and execute all documents in connection with the establishment and implementation of the Corporation’s Budget; and be it further RESOLVED, that the President of the Corporation or a Designee be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

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Acting Chair Kummer then invited Ms. Jaiyesimi to provide the Corporate Update. She gave a special welcome to the two new Directors and provided thanks to their former appointees Lee Warshavsky and Cy Richardson for their service.

Ms. Jaiyesimi then proceeded with the update which she advised would reflect construction updates at the B12 and B13 sites; the status of the discussions around the platform construction for Block 1120 and Block 1121; and answers to some questions that were raised by the Directors in advance of today’s meeting as well as provide a community relations update.

Before proceeding, Ms. Jaiyesimi introduced Arden Sokolow, ESD's new Executive Vice President of Real Estate and Planning who replaced Holly Leicht in that role.

Utilizing a PowerPoint presentation, Ms. Jaiyesimi started off with providing the project map for placemaking and for context of current status. She noted a total of eight buildings completed or very close to substantial completion. She identified B2, 461 Dean; B3, 38 Sixth Avenue; B4, 18 Sixth Avenue; B15, 644 Pacific Street which also includes the DOE Public Middle School currently being fit-out by the School Construction Authority; B14, 535 Carlton Avenue; B13, and B12, which are under development by TF Cornerstone, which are near substantial completion; and B1, 550 Vanderbilt which is also completed and occupied. She noted the balance of the project site, is Site 5 and B5 through B10.

Advancing the presentation slide, Ms. Jaiyesimi stated in June 2022, B12 and B13 still had façade working being completed and now in March 2023 the building has received its first full set of Temporary Certificates of Occupancy, and work was ongoing for completion of the open space.

Ms. Jaiyesimi noted upon completion of the open space at B12 and B13, there will be a total of approximately three acres of open space delivered on Block 1129, with the balance of the five acres of the total eight acres delivered along B5 and B10 over the platform sites.

Ms. Jaiyesimi further noted the affordable housing lottery for B12 and B13 is expected to open in the coming weeks. She stated the developer, TF Cornerstone, is working through their final approvals with the Housing Preservation Development agency (“HPD”), which is necessary for the marketing of these units. She advised those interested in getting more information about the lottery may visit 95deanlottery.com or New York City's housing connect portal, housingconnect.nyc.gov. She explained the applications are submitted via the housing connect portal and folks who are also interested in other affordable housing lotteries across New York City may visit that site for information as well. She advised both B12 and B13 will deliver a total of 798 units at 30 percent affordable which equals to 240 units of affordability.

Ms. Jaiyesimi reminded the Board that the open space delivered at the project site will include a dog run, a children's play area, active and passive uses space, and an opportunity for walkways through the portions of the site that will remain open. She also stated as the balance of the project sites are delivered, those additional open space areas will also be made available to the public. She further stated the Board also made consideration in 2019 related to below-grade use to allow for an indoor recreational facility at the bottom of B12 and B13. She noted the Chelsea Piers Fitness Center and Recreational Facility is expected to be open also in the Summer and available to the public.

Ms. Jaiyesimi flagged the Long Island Railroad was requested to be present for this meeting but weren't able to because of scheduling conflict. She noted it will be coordinated to ensure there's an opportunity to have a representative present at the next meeting. She further flagged that Scott Solish, who served as Executive Vice President for Greenland USA, transitioned from the firm and it will also be coordinated with the developer to ensure there is

representation moving forward. She advised that there was also a scheduling conflict on their end, but it was decided to move forward with this meeting since a quorum was obtained and she would answer questions or facilitate dialogue as necessary.

Transitioning to the status of the platform, Ms. Jaiyesimi stated about a year ago the developer made a public presentation they were ready to commence work on the platform construction at Block 1120. She further stated Block 1120 is the first section of the platform, and it describes the blocks along Atlantic Avenue between Sixth Avenue and Carlton Avenue. She advised the balance of the platform site is Block 1121, which follows from Atlantic Avenue from Carlton to Vanderbilt Avenue.

On the platform construction, she explained the developer offered drawings and information to the community that detailed the changes to vehicular and pedestrian flow of traffic as the work commenced. However, she advised the developer continues to be in negotiations with the Long Island Railroad with regards to the commencement of the platform construction and the permits necessary to advance the work.

Ms. Jaiyesimi explained there were some questions from the Directors specifically with regards to the details on the air rights, which are payments that the developer is required to make to the MTA and the Long Island Railroad, specifically for the ability to develop over the permanent yard.

Ms. Jaiyesimi stated the first question raised asked if the 2009 agreement with the MTA

has been modified and if so what were the current terms, She advised, per the Long Island Railroad and the MTA, that the 2009 Air Rights Agreement has not been modified and the developer is current on their payments to the MTA.

Ms. Jaiyesimi recognized the importance of the start of the platform work to be able to deliver on the balance of the project sites. As she presented earlier, the balance of the project sites, B5 through B10, would be developed over the platform in addition to Site 5 located across the street from the Barclays Center, the current site of P. C. Richard and the former site of Modell Sporting Goods.

Acting Chair Kummer asked if there was a forecast on when they intend to start platform work and what the completion date might be. Ms. Jaiyesimi reiterated that given the developer made public presentations last year, that they are ready to commence work as soon as they wrapped up their negotiations and discussions with the Long Island Railroad and receive the necessary permits from the Long Island Railroad to be able to advance the work.

Ms. Jaiyesimi stated the developer has obtained the necessary contractors and has their team ready to move forward with the work but it's subject to receiving the approvals from the MTA to be able to commence work and to have the necessary agreements in place.

As it relates to the schedule and the timeline for the platform, Ms. Jaiyesimi explained the platform would be developed in phases and each Super Block, Block 1120 and Block 1121, would be the portions that house six of the buildings that would be developed, B5 through B10.

As of right now, Ms. Jaiyesimi noted the developer is able to commence work on the platform, start on the base of what would be the base of B5 and then commence that portion of the platform and then move on to the base of what would be B6 and then B7, thereby completing Block 1120, and then moving on to the next portion eastward completing the base for B8, B9, and B10.

Ms. Jaiyesimi again stated regarding the phasing of that work, once they're able to commence construction, allows for there to be the start of work on the platform and then progress enough to start on the vertical overbuild for the buildings over the site as well. But she stated, again, timing, would be dependent on when they get the necessary approvals from the Long Island Railroad.

Acting Chair Kummer asked for confirmation that they started making the payments and further asked when they started. Director Veconi responded payments began in 2012 and Ms. Jaiyesimi concurred.

Acting Chair Kummer expressed concern that they're still negotiating over a permit that they're required to provide. Director Veconi asked what is outstanding with the MTA that's preventing the project from moving forward. Ms. Jaiyesimi replied that the negotiations have ranged from various engineering questions and various questions about how the construction work will be phased; to also the developers guarantee and the necessary financial structure of what the agreements would be to allow for the platform work to continue. She also advised that discussions with the MTA range from kind of looking from a micro-perspective of the specific project sites and the details and the complexities of

engineering at each aspect of the platform to a macro-discussion of what it looks like to get from the start of construction to the completion of the platform once the last vertical build is completed.

Director Veconi stated it was important to have an understanding of what's holding up the MTA negotiation. He further stated this project has a responsibility to complete another 877 units of affordable housing by 2025 and there's no potential that this platform, where these units are supposed to be, can be built in that time. He stated there are very significant liquidated damages that have been agreed upon for every unit that's delayed.

Director Veconi asked for ESD's position about collecting those remedies. He noted at previous Board meetings, representatives from Empire State Development claimed that the remedies are non-negotiable, that they're going to be collected, and that's the incentive to get the project done. He asked if that was still ESD's perspective.

Ms. Jaiyesimi replied that the project documents haven't changed so the requirements on the project are still the same. She further advised that it's recognized where things are with the developer's ongoing discussions with the MTA as it relates to the platform, which is critical for the delivery of the balance of the buildings for B5 through B10. She reiterated at this time, there have been no changes to the project documents and the obligations are still standing.

Acting Chair Kummer requested that persons of sufficient authority and ability to provide relevant information be present from both the MTA and the developer at the next meeting advise about the status of those discussions and a firm timeline for when they will be

completed and when the permitting will be issued. Director Veconi stated he was interested in that same information and is also very interested in understanding from the developer where the situation with the performance remedies will leave them at this point. He stated that was a tremendous obligation that now is going to come due in a relatively short period of time. Ms. Jaiyesimi noted the requests and stated it would be coordinated both with the Director's availability, so able to ensure that we have a quorum as well as having representatives from the development team and the MTA as well.

Director Shiffman asked how viable the developer was given the present market situations that exist both here and abroad. He also asked if an assessment is being made beforehand so that options available are not reactive at the last minute and the ability to evaluate how viable they are over time is given for the various circumstances that may arise exists.

At Acting Chair Kummer's request, Ms. Jaiyesimi stated an in-person Directors' Meeting would try to be scheduled in July based on availability of the Directors, the developer and the MTA. She then noted since the last Director's meeting, there have been three quality of life meetings in July, September, and February. She advised some of the discussion topics that have come up have been the status of the middle school, which is at the base of 664 Pacific Street, that the developer has turned over to the School Construction Authority and fit-out of the school space is ongoing. She noted there were no updates yet in terms of when the school will be open. She stated there have been reports that it will be academic year 2025 but that information will be confirmed.

Ms. Jaiyesimi flagged the request from members of the public to have representatives from the Department of Education available at a Quality-of-Life meeting to answer questions around how the opening of the school will be managed, and what impacts that will have to the local community in terms of pick-up and drop-offs and crossing guards, et cetera, and various points about the operations of the school space in the community.

Going back to the 595 Dean Street, Director Veconi noted that the project was structured in a way that today, given the change in AMI, doesn't really deliver housing that's very affordable and he further noted that there was no longer any Community preference at Atlantic Yards.

In terms of quality of life issues, Director Veconi mentioned the major water and sewer project that's going in on Dean Street between Sixth Avenue and Vanderbilt Avenue, being implemented largely because of the additional capacity for the sewer required for Atlantic Yards buildings. He noted it will have a major impact on businesses on Vanderbilt Avenue who were advised to expect water shutoffs from 9:00 a.m. to 4:00 p.m. in the months of July and August, which makes it impossible to run a restaurant. He noted it something the City Councilmember and Department of City Planning are trying to work through. He stated it was not the fault of the developer or the State, but it is a major environmental impact and economic impact that was not factored in to any analysis of this project. Director Gabriel asked if notice is provided on projects occurring around the Atlantic Yards sites and Ms. Jaiyesimi responded that notice was given to the local community.

Director Shiffman stated he wanted to return to the issue of 130 percent of median

income because the levels of income that are now as he was concerned it was too high. He advised that a way to urge the developer and local governments to meet the original obligations need to be found rather than continuing at the current rate because otherwise it could lead to an economically segregated community. Director Veconi noted the affordable New York is sunsetting as well, so there is no tax abatement currently in the State of New York.

Director Veconi wanted to return to Director Shiffman's concern of the developers' viability to complete the project. Stating concerns about the previous developers and their financial situations he asked if ESD had done an independent analysis of the economic viability of having a private developer develop the rail yards. Ms. Jaiyesimi asked if he was noting that if it's not viable for there to be a private developer, was he proposing there would be other development partners with a different structure of the deal. Director Veconi responded that certainly having multiple development partners would spread the risk and would make the project more resilient.

Ms. Jaiyesimi then noted for follow up for the next meeting of the Directors would be a presentation and discussions from the MTA as well as the development team to talk about the ongoing discussions related to the platform; and there also needs to be a discussion about what the balance of the project will be, B5 through B10 as well as Site 5. She also noted a forecast of what would be in the viability of developing the balance of the project, as well as the conversation around the affordability requirements, noting the 2025 affordable housing deadline, as well as the balance of the 2,250 units that are due and what that looks like at the project, given the fact that there is no 421-a and that affordable New York, has expired as

well; and what the conversations are around how public benefits are delivered for the project and at levels of affordability that are more reflective of what the stakeholders in the community are interested in seeing.

Director Veconi asked if it is possible to ask ESD to commission the type of feasibility analysis that will help inform decisions about this project and Ms. Jaiyesimi responded that something to take under consideration.

An additional point Director Veconi wanted to raise since he stated it was a virtual certainty that the affordable housing deadline cannot be met if there was an obligation to try to find another place to put the affordable housing that isn't going to get built in 2025 over the platform and Ms. Jaiyesimi replied that this could be part of upcoming discussions. Directors Shiffman and Veconi and Acting Chair Kummer all expressed their desires to continue the discussion of affordable housing opportunities at the next meeting.

Director Veconi then asked to return to the Urban Room discussion from the last Board Meeting and the missed deadline for its completion which had a hard deadline with liquidated damages for non-performance.

Director Veconi reminded the Directors that it was envisioned as a public space, an indoor glass-enclosed atrium where people could gather. He stated it would have been located at the base of a building that would have been built directly in front of the Arena and the deadline was not contingent on the rest of the building. He stated it was supposed to be

built by May 2022an it hasn't been started and the liquidated damages were 10 million dollars to be collected over the course of a year. He asked if ESD has moved to collect the liquidated damages for the non-completion.

Ms. Jaiyesimi responded that as provided in a follow-up to the Directors after the last meeting, ESD has not moved to collect the liquidated damages on the Urban Room. She advised, as Director Veconi stated, that the Urban Room is intended to be a glass enclosure which would be over what is currently the plaza which has taken on a life of its own. She further explained the developer has expressed an interest in transferring the development bulk from B1, which is the building that is intended to be built over the plaza to Site 5. She advised ESD is committed to looking at how to preserve the Arena Plaza as open space, as well as delivering additional open space elsewhere at the project site and further advised there hasn't been an action to move to collect those liquidated damages.

Director Veconi asked if ESD waived the damages or if ESD has advised the developer that it doesn't intend to collect them and they're not responsible. Ms. Jaiyesimi responded that the project documents have not changed and at this time, again, the intention would be to preserve the Arena Plaza as public open space and to consider opportunities for improving open space at other portions of the project site. She noted that would be part of the public review process for the proposed modifications to the General Project Plan and reiterated those decisions have not been made by ESD and it would be subject to the public review process. She

stated the documents permit for ESD to have the option to collect and to issue notice regards to the liquidated damages, and that notice has not been issued yet.

Ms. Jaiyesimi explained ESD is committed to carrying out a full public engagement process even before the start of the formal GPP process or whatever the necessary environmental review would be necessary for the proposed modifications, which would include opportunities for members of the public and key stakeholders to provide feedback on what's been developed.

As it related to timing, Ms. Jaiyesimi stated it will be informed by discussions with the AYCDC Directors informed by the discussions with elected officials and wanting to be in a position to get and collect as much public feedback that informs what the MGPP process looks like as well.

Director Shiffman expressed his belief that it is important to deal with the affordability and the completion of the platform and not tie this to that, because there may be other options that will emerge in the future. He explained that it may be that the kind of density and development at the core of downtown Brooklyn is not needed.

Acting Chair Kummer asked where the termination process stood on Site 5 and Ms. Jaiyesimi state as a result of the litigation resolution, there's an agreement between the developer and P.C. Richard that doesn't require condemnation of the site.

A brief discussion on the attendance numbers and recent format of Quality of Life Meetings was had and then Director Veconi asked if the AYCDC Meetings could again be held in Brooklyn. Ms. Jaiyesimi noted the difficulty in meeting technology requirements for the more recent meetings and hence the move to ESD's offices but stated this could be revisited. It was also requested that an annual meeting calendar be distributed so meeting dates could be held on the Directors' calendars to avoid the scheduling conflicts that have occurred more recently and Ms. Jaiyesimi noted that would be provided.

Acting Chair noted that there were no members of the public wishing to provide comments during the "Public Comment" portion of the Agenda so before calling for a motion to adjourn, he asked if anyone had any other questions or comments.

Director Shiffman asked if the move in dates of the market rate and lottery apartments could occur simultaneously rather than occurring separately and Ms. Jaiyesimi stated she would pass along that comment.

Hearing no further business, the meeting was adjourned at 11:02 a.m.

Respectfully submitted,

Debbie Royce
Corporate Secretary